

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, DECEMBER 11, 2008

COMMONWEALTH OF VIRGINIA ex rel.

STATE CORPORATION COMMISSION

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CASE NO. PUE-2008-00112

Ex Parte: In the matter of considering
§§ 532(a) and 1307(a) of the Energy
Independence and Security Act of 2007

ORDER ESTABLISHING PROCEEDING

Section 111 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), 16 U.S.C. 2601 et seq. (2006), requires each state regulatory authority, with respect to each electric utility for which it has ratemaking authority, to consider certain federal standards for electric utilities established by PURPA. Each such state regulatory authority is required to determine whether it is appropriate, to the extent consistent with otherwise applicable state law, to implement these standards.¹ The State Corporation Commission ("Commission") has conducted a number of proceedings since PURPA's adoption in 1978.²

On December 19, 2007, the President signed the Energy Independence and Security Act of 2007 ("Energy Independence and Security Act" or the "Act"), Pub. L. 110-140, 121 Stat. 1492, into law. The stated purposes of this Act include moving the United States toward greater energy independence, increasing the production of clean renewable fuels, promoting research on the capture and storage of greenhouse gases, increasing energy efficiency in buildings, vehicles,

¹ 16 U.S.C. § 2621(a) (2006).

² Such proceedings include Case Nos. PUE-1979-00014, PUE-1980-00076, PUE-1980-00092, PUE-1980-00093, PUE-1980-00094, PUE-1980-00095, PUE-1980-00096, PUE-1980-00102, PUE-1980-00112, PUE-1980-00113, PUE-1980-00114, PUE-1980-00115, PUE-1980-00116, PUE-1980-00117, PUE-2006-00002, PUE-2006-00003 and PUE-2006-00064.

and other products, improving the energy performance of the federal government, and protecting consumers.

Section 532(a) of the Energy Independence and Security Act amends § 111(d) of PURPA, 16 U.S.C. 2621(d), by adding the following standards for consideration:

- (16) Integrated resource planning.--Each electric utility shall—
 - (A) integrate energy efficiency resources into utility, State, and regional plans; and
 - (B) adopt policies establishing cost-effective energy efficiency as a priority resource.
- (17) Rate design modifications to promote energy efficiency investments.—
 - (A) In general.--The rates allowed to be charged by any electric utility shall—
 - (i) align utility incentives with the delivery of cost-effective energy efficiency; and
 - (ii) promote energy efficiency investments.
 - (B) Policy options.--In complying with subparagraph (A), each State regulatory authority and each nonregulated utility shall consider—
 - (i) removing the throughput incentive and other regulatory and management disincentives to energy efficiency;
 - (ii) providing utility incentives for the successful management of energy efficiency programs;
 - (iii) including the impact on adoption of energy efficiency as 1 of the goals of retail rate design, recognizing that energy efficiency must be balanced with other objectives;
 - (iv) adopting rate designs that encourage energy efficiency for each customer class;
 - (v) allowing timely recovery of energy efficiency-related costs; and
 - (vi) offering home energy audits, offering demand response programs, publicizing the financial and environmental benefits associated with making home energy efficiency improvements, and educating homeowners about all existing Federal and State incentives, including the

availability of low-cost loans, that make energy efficiency improvements more affordable.

Section 1307(a) of the Energy Independence and Security Act further amends § 111(d) of PURPA by adding two standards concerning smart grids.³ Specifically, Section 1307(a) provides:

(16) Consideration of smart grid investments.—

- (A) In general.--Each State shall consider requiring that, prior to undertaking investments in nonadvanced grid technologies, an electric utility of the State demonstrate to the State that the electric utility considered an investment in a qualified smart grid system based on appropriate factors, including—
 - (i) total costs;
 - (ii) cost-effectiveness;
 - (iii) improved reliability;
 - (iv) security;
 - (v) system performance; and
 - (vi) societal benefit.
- (B) Rate recovery.--Each State shall consider authorizing each electric utility of the State to recover from ratepayers any capital, operating expenditure, or other costs of the electric utility relating to the deployment of a qualified smart grid system, including a reasonable rate of return on the capital expenditures of the electric utility for the deployment of the qualified smart grid system.
- (C) Obsolete equipment.--Each State shall consider authorizing any electric utility or other party of the State to deploy a qualified smart grid system to recover in a timely manner the remaining book-value costs of any equipment rendered obsolete by the deployment of the qualified smart grid system, based on the remaining depreciable life of the obsolete equipment.

(17) Smart grid information.—

³ The standards listed in Section 532(a) of the Act discuss "integrated resource planning" and "rate design modifications to promote energy efficiency investments," and are numbered (16) and (17), respectively. The standards listed in Section 1307(a) of the Act discuss "consideration of smart grid investments" and "smart grid information," and are also numbered (16) and (17), respectively.

- (A) Standard.--All electricity purchasers shall be provided direct access, in written or electronic machine-readable form as appropriate, to information from their electricity provider as provided in subparagraph (B).
- (B) Information.--Information provided under this section, to the extent practicable, shall include:
 - (i) Prices.--Purchasers and other interested persons shall be provided with information on—
 - (I) time-based electricity prices in the wholesale electricity market; and
 - (II) time-based electricity retail prices or rates that are available to the purchasers.
 - (ii) Usage.--Purchasers shall be provided with the number of electricity units, expressed in kwh, purchased by them.
 - (iii) Intervals and projections.--Updates of information on prices and usage shall be offered on not less than a daily basis, shall include hourly price and use information, where available, and shall include a day-ahead projection of such price information to the extent available.
 - (iv) Sources.--Purchasers and other interested persons shall be provided annually with written information on the sources of the power provided by the utility, to the extent it can be determined, by type of generation, including greenhouse gas emissions associated with each type of generation, for intervals during which such information is available on a cost-effective basis.
- (C) Access.--Purchasers shall be able to access their own information at any time through the Internet and on other means of communication elected by that utility for Smart Grid applications. Other interested persons shall be able to access information not specific to any purchaser through the Internet. Information specific to any purchaser shall be provided solely to that purchaser.

Pursuant to Section 1307(b)(3) of the Energy Independence and Security Act and Section 112(d) of PURPA, however, state regulatory authorities are not required to consider and determine whether the "rate design modifications to promote energy efficiency investments" standard in Section 532(a) of the Act or the "smart grid information" standard in Section 1307(a) of the Act should be implemented, if, prior to the enactment of the statute: (1) the state

implemented the standard or a comparable one; (2) the state regulatory authority conducted a proceeding to consider implementation of the standard or a comparable one; or (3) the state legislature voted on the implementation of the standard or a comparable one.⁴

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that, notwithstanding the Commission's reservations as to the legal propriety of the federal act,⁵ a proceeding will be established to consider for implementation in the Commonwealth the standards enumerated in Sections 532(a) and 1307(a) of the Energy Independence and Security Act. This action shall not constitute a waiver of any right of the Commission or the Commonwealth of Virginia, including hereafter any right to object, to claim immunity, or to interpose state sovereignty in response to any actions that may be taken by any person, federal authority, or other entity in relation to the Energy Independence and Security Act.

We will direct that notice be given to the public and that interested persons have an opportunity to comment on the issues raised herein. The Staff has developed lists of individuals, organizations, and companies that may be interested in this proceeding. We will direct the Staff to provide copies of this Order Establishing Proceeding ("Order") by electronic transmission, or when electronic transmission is not possible, by mail, to individuals, organizations, and companies on these lists. We will also direct that a copy of this Order be published in the Virginia Register.

⁴ However, the Commission must consider the standard concerning "integrated resource planning" in Section 532(a) of the Act and the standard concerning the "consideration of smart grid investments" in Section 1307(a) of the Act regardless of whether the state regulatory agency or state legislature have previously implemented either those exact standards or comparable standards, conducted a proceeding to consider implementation of the standards, or voted on the implementation of the standards.

⁵ The Commission notes that developments in the law subsequent to the original adoption of PURPA raise doubt about the constitutionality of the co-opting of state regulatory agencies to implement a federal regulatory scheme. See, e.g., Printz v. United States, 521 U.S. 898 (1997); New York v. United States, 505 U.S. 144 (1992).

Therefore, the Commission invites interested persons to comment on the following issues: (1) whether the Commission has the authority to consider these four standards and whether the implementation of such standards would be consistent with otherwise applicable Virginia law; (2) whether any prior state action has occurred such that standards in Section 532(a) of the Act, or comparable standards, have already been implemented or considered in the Commonwealth; (3) whether any prior state action has occurred such that the standards in Section 1307(a) of the Act, or comparable standards, have already been implemented or considered in the Commonwealth; (4) whether the integrated resource plans that electric utilities are obligated to develop and file with the Commission under Section 56-597 et seq. of the Code of Virginia satisfy the requirements set out in (16) of Section 532(a) of the Act; (5) whether electric utilities over which the Commission has ratemaking authority should be required to develop rate design modifications to promote energy efficiency investments; (6) whether electric utilities over which the Commission has ratemaking authority should demonstrate to the State that they considered an investment in a qualified smart grid system based on appropriate factors; and (7) whether electric utilities and providers over which the Commission has ratemaking authority should provide electricity purchasers with direct access, in written or electronic machine-readable form, to information such as prices, usage, sources, and intervals and projections.

If an interested person advocates implementing any of the standards listed in Sections 532(a) or 1307(a) of the Energy Independence and Security Act, such person should describe in their comments how such standards would best be implemented.

Accordingly, IT IS ORDERED THAT:

(1) This case is docketed and assigned Case No. PUE-2008-00112.

(2) The Commission's Division of Information Resources shall forward a copy of this Order to the Registrar of Regulation for publication in the Virginia Register.

(3) Within five business days of the filing of this Order with the Clerk of the Commission, the Staff shall transmit electronically or mail copies of this Order to interested persons and organizations as discussed in this Order.

(4) On or before January 7, 2009, the Staff shall file with the Clerk of the Commission a certificate of the transmission or mailing required by Ordering Paragraph (3) and include a list of the names and addresses of persons to whom the Order was transmitted or mailed.

(5) On or before February 6, 2009, any interested person may file an original and fifteen (15) copies of comments with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Comments shall refer to Case No. PUE-2008-00112 and address the specific issues raised in this Order. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: www.scc.virginia.gov/case.

(6) On or before March 6, 2009, the Staff shall file comments with the Commission presenting its findings and recommendations, or responding to any comments filed by interested persons in this matter.

(7) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:
C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel,
Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and the
Commission's Divisions of Economics and Finance and Energy Regulation.